S.B.Civil Writ Petition No.3950/2007

Godavari @ Girdavari & Ors.

Vs.

The Board of Revenue, Ajmer & Ors.

Date : 17.7.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.H.S. Sandhu, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order of the Board of Revenue dated 21.6.2006 as well as against the order dated 11-1-05 passed by the Revenue Appellate Authority.

Brief facts of the case are that original allottee of the land in question was one Babu Ram. He died and it was alleged that his legal heirs including the petitioner, wife of said Babu Ram, entered into an agreement for sale of the land on 12.6.91 and it is alleged that by this, the legal heirs of Babu Ram aggreed to sell the land to Apar Singh, Gurcharan Singh and Darshan Singh. Since the transfer of land was prohibited under the relevant provisions of law, therefore, the allotment of the land in question itself

was cancelled by the Concerned competent authority by order dated 23.7.1993. Large number of cases of such nature wherein there were claims submitted by the persons holding the agreement to sale and claiming possession over the land under the agreement, the allotment orders of the original allottees were cancelled for violation of the statutory provisions against the transfer.

Looking to the serious nature of dispute, Hon'ble Supreme Court directed to constitute a Special Court and in pursuance of the directions of the Hon'ble Supreme Court, Special Courts were constituted. In the present case, the cancellation of land of petitioner by order dated 23.7.1993 on the ground of entering into an agreement to sale with the above mentioned Apar Singh, Gurcharan Singh and Darshan Singh, the matter were considered by the Special Court wherein the above said persons were parties. The Special Court vide order dated 17.8.1998 set aside the order of cancellation of allotment dated 23.7.1993 and restored the allotment in favour of the applicant and by the same order dated 17.8.1998, it was ordered that the possession of land be delivered to all the legal representatives of deceased Babu Ram. In pursuance of the similar orders and to give relief to the persons in whose favour the orders have been passed by the Special Court, the District Collector, Sri Ganganagar published a notice

on 2.3.2002 (Annex.2) whereby it has been conveyed to the person in whose favour orders have been passed by the Special Court to take possession through the administrative authorities, the revenue authorities. The petitioner in response to said notice issued by the District Collector Sri Ganganagar dated 2.3.2002 applied before the Sub-Divisional Officer Ghadsana and prayed that the land may be restored in the revenue record in the name of all heirs of deceased Babu Ram including the petitioner and she may be given possession of the land in dispute. This application was allowed by the Sub Divisional Officer vide his order dated 22.6.2004 (Annex.3).

Being aggrieved against the order dated 22.6.2004, one Baljeet Kaur preferred an appeal before the Revenue Appellate Authority Sri Ganganagar. According to said respondent Baljeet Kaur the land in question was first sold by registered sale deed dated 16.3.1998 by the heirs of deceased Babu Ram to Kaur Singh and others. Those purchasers – Kaur Singh and others sold the land in question to respondent Baljeet Kaur by sale deed dated 14.5.2004. In view of the above reasons, Baljeet Kaur submitted that she cannot be dispossessed from the land in dispute nor any changes can be made in the revenue entries because of reason that she is purchaser of the land in dispute from the heirs of the original allottee Babu Ram. The learned Revenue Appellate

Authority allowed the appeal of the respondent Babu Ram vide order dated 11.1.2005 and set aside the order of the S.D.O., Ghadsana dated 22.6.2004 and also set aside the mutation no.59 dated 13/19.7.2004.

Being aggrieved against the order of the Revenue Appellate Authority dated 11.1.2005, the heirs of deceased Babu Ram preferred appeal before the Board of Revenue. The Board of Revenue was of the view that before passing any order about any change in the revenue record, opportunity of hearing should have been given to all concerned persons and since the learned S.D.O. before passing the order dated 22.6.2004 has not given any opportunity of hearing to all parties, therefore, the matter is required to be decided afresh. This order of remand has been challenged by the petitioners – heirs of deceased Babu Ram by filing this writ petition.

According to learned counsel for the petitioners, the order passed by the Special Court dated 17.8.1998 attained finality and it has not been challenged by anybody including the respondents – alleged purchasers of the land in question. It is also submitted that the proceedings for handing over possession was initiated by the learned District Collector by publishing notice which was never objected by the respondents, the alleged purchasers. The Sub Division Officer passed the

administrative order dated 22.6.2004 and the order dated 22.6.2004 is not a judicial order. Therefore, no appeal could have been preferred against the order dated 22.6.2004 by respondent Baljeet Kaur nor it could have been set aside by the Revenue Appellate Authority. It is also submitted that in fact the order 22.6.2004 is only an order complying the original order passed by the Special Court dated 17.8.1998. Therefore, also, the order dated 22.6.2004 could not have been challenged by the respondents.

Learned counsel for the petitioners submitted that assuming for the sake of arguments that Baljeet Kaur purchased some part of the land from the heirs of Babu Ram and not from Girdavari wife of Babu Ram, then if any right accrued to them on the basis of said transfer, then they could have availed any remedy in accordance with law but have no right to challenge the order either passed by the Special Court or passed by the Sub Divisional Officer to execute the order passed by the Special Court. In view of the above reason, according to learned counsel for the petitioners, the order of the Revenue Appellate Authority dated 11.1.2005 is wholly without jurisdiction and further the order passed by the Board of Revenue suffers from serious error of law when the Board of Revenue merely remanded the matter back to the lower authorities for

deciding.

I considered the submissions of the learned counsel for the petitioners and perused the order dated 17.8.1998 passed by the Special Court. In this order Apar Singh, Gurcharan Singh and Darshan Singh were parties. Before the Special Court, only agreement dated 12.6.1991 was under consideration. The order passed by the Special Court is also against the above mentioned three persons and for removal of those persons because of the reason that they were found to be trespasser over the land in question. By order dated 17.8.1998, the Special Court only set aside the cancellation order by which the land allotment was cancelled by the State Government. Therefore, the effect of the order dated 17.8.1998 in substance and in fact is only that the land stands restored in favour of said Babu Ram deceased and because of his death, his legal heirs became khatedar tenant and they stand in the shoes of the allottee Babu Ram and, therefore, the Special Court specifically ordered that the land may be recorded in the name of legal heirs of Babu Ram. So far as this subject and controversy is concerned, respondent Baljeet Kaur could not have any grievance because of the reason that she is not claiming the land through Apar Singh, Gurucharan Singh and Darshan Singh nor she could have challenged the order dated 17.8.1998 by

which the land in question stand regularised in favour of Babu Ram's heirs. Therefore, the contention of learned counsel for the petitioners that the order dated 17.8.1998 attained finality is of no help to the petitioners rather because of this order dated 17.8.1998, Baljeet Kaur's predecessor's title was made clear and, therefore, she is in fact beneficiary of the order dated 17.8.1998 and there was no reason for her to challenge the order dated 17.8.1998 passed by Special Court. The contention of the petitioners that respondent Baljeet Kaur has not challenged the order dated 17.8.1998 is not adverse to the interest of Baljeet Kaur but its challenge would have been against the interest of Baljeet Kaur.

The District Collector could have executed the order dated 17.8.1998 which was passed by the Special Court only in accordance with law and if power was given to the District Collector for executing the said order dated 17.8.1998. Be it as it may be, in response to it, if the petitioner submitted an application for removal of the encroachment from the land in dispute as well as for recording their name in the revenue record, then that could have been done by the competent authority in accordance with law by following the procedure as prescribed in the relevant provisions of law and by that also, only the effect could have been

given to the order dated 17.8.1998 i.e. if Apar Singh, Gurcharan Singh and Darshan Singh or anybody claiming through them would have been in possession of the land in dispute then those persons could have been evicted in execution of the order dated 17.8.1998. Respondent Baljeet Kaur is not claiming any derivatory title from Apar Singh, Gurcharan Singh and Darshan Singh nor is claiming any transfer of interest under the agreement dated 12.6.1991, therefore, Baljeet Kaur could have been evicted in the garb of the order dated 17.8.1998. The heirs of Babu Ram, as stated by the learned counsel for the petitioners, except Godawari Devi, are alleged to have executed the sale deed in favour of Kaur Singh and others as back on 16.3.1998 then the purchasers of the land in dispute from some of the heirs of Babu Ram sold the land to respondent Baljeet Kaur, that transaction is absolutely independent and has nothing to do with the order passed by the Special Court dated 17.8.1998 or order dated 22.6.2004 passed by the Sub-Divisional Officer. The order of the Sub Divisional Officer dated 22.6.2004 by which it was ordered that the name of heirs of Babu Ram be entered, was certainly an order which was against the interest of Baljeet Kaur. Therefore, if she was allowed to prefer appeal, then the Revenue Appellate Authority has not committed any error of law.

Not only this, several questions remain unanswered which could have been answered only if the notice would have been given to the persons who were claiming the right, title or interest in the land in dispute. Therefore, when the order 22.6.2004 which was passed by the Sub-Divisional Officer without notice and opportunity of hearing to person in occupation and without holding any enquiry to find out whether in fact, the persons against whom the order was passed by the Special Court dated 17.8.1998 were in fact in possession of the land in dispute or not ? Or whether they are resisting the delivery of possession or not ? Even if the order dated 22.6.2004 may be treated to be an administrative order and not an order of opening mutation directly, then also, if the Board of Revenue was of view that before passing the order dated 22.6.2004, opportunity of hearing should have been given to all the concerned parties, this court is not inclined to interfere in such order because of the reason that all questions could have been decided by the said authority including the question whether the order passed by the Special Court dated 17.8.1998 is executable in the manner in which execution has been sought and if that order can be executed as is being executed, then whether respondent Baljeet Kaur acquired any right, title or interest in the property by virtue of her purchase of the property from the persons who at

the relevant time may not have valid allotment order but got the allotment order restored from the time it was cancelled. All these questions first are required to be answered by the same authority.

In view of the above reasons, this court is not inclined to entertain this writ petition.

Accordingly, this writ petition, having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya